

IN SENATE OF THE UNITED STATES.

JANUARY 20, 1845.

Submitted, and ordered to be printed.

MR. JARNAGIN made the following

REPORT:

[To accompany bill S. 74.]

*The Committee on Revolutionary Claims, to whom was referred the memorial of John S. Russwurm, the son and legal representative of William Russwurm, deceased, an officer of the Revolution, praying to be allowed interest on commutation pay, have had the same under consideration, and now report :*

That it is most satisfactorily proved that William Russwurm, deceased, was a lieutenant in Captain Pinkerton Eaton's company, of the North Carolina line, on continental establishment, was a very meritorious officer, continued in service to the close of the Revolution, and was legally entitled to commutation pay ; that the present memorialist is his son and legal representative.

The present application is not for commutation pay, that having been heretofore allowed by an act of Congress passed the 12th of June, 1838, and has been paid, but was paid without interest, and the interest is now sought to be obtained. After a recital of facts, as disclosed in the memorial, the committee will inquire how far it has been the practice of the Government of the United States to allow interest upon claims for commutation pay, and apply the practice and principles pursued and adopted by the Government in such cases to the facts of this case, and thereby determine upon the propriety of granting the prayer of the memorialist.

It appears that William Russwurm was an officer in the revolutionary war, and served, with honor to himself and benefit to his country, to the end of the war, and had an undoubted right to claim a compliance with the promises of Congress in the resolutions of 15th May, 1778, October 3 and 21, 1780, and March 22, 1783 ; but, without these promises having been redeemed, he died in the city of Philadelphia, in the year 1793, a few months after the birth of the present memorialist. When about six years of age, the memorialist was taken from his mother, by a relation, to Warren county, in the State of North Carolina, and never saw her afterwards. When about thirteen years of age, he removed, with his relation, to Williamson county, in the State of Tennessee, where, and in the county of Rutherford, in that State, he has ever since resided. It appears he was entirely ignorant of the fact that his father had been an officer in the revo-

lutionary war until a very short time before he presented his first memorial, in 1837, and then derived his information from a letter of William Hill, secretary of North Carolina, informing him that his father's name was on the pay roll in his office as lieutenant, and was entitled to 2,560 acres of land. Memorialist petitioned, and received from North Carolina warrants for that quantity of land, but, owing to delay in their issuance, previous locations, and other obstacles, was constrained to part with them at twenty cents per acre, resulting in a serious loss upon the amount to which he was justly entitled, produced by his want of information of his rights; and to this loss has been superadded the loss of interest upon the commutation pay to which he was entitled, and which had been paid in numerous instances of the same kind, making a distinction between his case and that of others standing upon the same basis. It has been before stated, that memorialist made his application to Congress in 1837, shortly after he was informed of his rights by Secretary Hill, and was therefore guilty of no laches in presenting his claim after he was made acquainted with the facts upon which it depended; and it does not seem unreasonable to the committee that he be placed on the same footing with others, who may have made an earlier application, because of their more favorable situation for a knowledge of their rights.

As to the propriety of allowing interest upon claims for commutation pay, the committee will remark, that such pay was no gratuity or pension, but founded on contract between the United States and such officers as served in the army to the end of the revolutionary war, was a part of the consideration upon which the services were rendered, and constituted debts against the United States, and, under the circumstances of the case, of the highest obligation, and, so far as the committee are informed, have never been repudiated. The officers, therefore, became creditors; and, by the laws or resolutions of the old Congress, interest was allowed and paid to all creditors of the United States, from the time payment became due, as appears by sundry resolutions, but particularly by that of 3d of June, 1784. By that of the 23d of March, 1783, Congress provided for the payment of such debts, in money, or securities on interest, as Congress should find most convenient, and treated commutation pay to officers as debts against the United States, which they were, in fact, as much as any other pay due. It is difficult to see how William Russwurm's claim was less, because he did not apply, than it would have been if he had received securities on interest, which it is known Congress preferred issuing in all cases, as is proved by the act of the 4th of August, 1790, allowing interest on all certificates subscribed to the funding system; and the interest became a part of the principal, bearing an interest of three per cent. This was a debt due to William Russwurm, equally meritorious as any due to individual States; and, by the act of 31st May, 1794, interest was allowed on balances found due to States. How has Congress treated other debts against the United States, as to the allowance of interest? By act of 17th March, 1790, interest is directed to be paid on certain small loans made by the Secretary of the Treasury. By act of 11th August, 1790, even invalid pensions were put upon the ground of debts, and certificates of registered debts, which bore interest, were directed to be issued for them; and in March, 1804, the invalid pensioners of South Carolina were transferred to the United States, and certificates of registered debt, bearing interest, were directed to issue for their arrears of pension, from the time of being wound-

ed or discharged. But there is still a stronger case. By an act of July 5, 1832, the half pay promised by Virginia to her officers of the revolutionary army, and which has been assumed by the United States, was directed to be paid to those officers or representatives, with interest upon each year's half pay, from the time the same became due.

From the end of the Revolution to the year 1834, interest was uniformly allowed upon commutation pay, both by the accounting officers of the Treasury and by the Congress of the United States. On the 29th of April, 1816, an act was passed by Congress for the relief of Elizabeth Hamilton, widow of Alexander Hamilton, in which an allowance was made to her of seven years' half pay of her husband, without saying any thing about interest; and the question arose, whether interest should or should not be paid; and that question was submitted to Richard Rush, at that time Attorney General of the United States, for his opinion, which was given 29th June, 1816. He said, the act for the relief of Mrs. Hamilton, "taken in connexion with the resolution of March 22, 1783, appears to me, on full consideration, to enforce the construction that it was the intention of Congress not merely to make an independent grant to Elizabeth Hamilton, but to place her upon a footing of equal advantage, in all respects, with the officers entitled to commutation under that resolution. The consequence will be, that (as was the case with the officers themselves, none of whom, it is believed, received the amount in money) *she, too, will be entitled to interest* at six per cent., the rate specified in the resolution." So, it will be seen, the Attorney General, in 1816, recognised it as an established fact and recognised principle, that interest was due and to be paid to officers entitled to commutation; and the first departure from this, or doubt expressed, known to the committee, was in 1834, in the case of Lieutenant John Taylor and that of eighteen others, in which bills had passed the House allowing interest, but in the Senate the interest was stricken out, "*without prejudice to the rights of the parties.*" It may not be amiss to remark, that, in the 2d session of the 23d Congress, in the cases of Hannah Douglass and Lucy Bond, the Senate decided "that cases which had been presented in proper time, and not then allowed, ought to be entitled to interest."

Over one thousand seven hundred and fifty-four claims of individuals against the United States, growing out of revolutionary services, have been paid, with interest, and about fifty-four without interest. Of the first, one hundred and twenty-two were, by special acts of Congress, in favor of named individuals—and of that number thirteen were passed specially for the allowance of interest, after the principal had been paid under former acts; and in the fifty-four cases referred to, the right to interest is not denied, but is not given. After the best examination the committee have been able to give the subject, they are satisfied the commutation pay due to officers were so many debts against the United States, resting for payment not alone upon legal obligation, but also upon the honor and gratitude of the American people; and upon them, law, reason, and the practice of the Government, allow interest. In the case of the memorialist, as meritorious as that of any other, interest has been withheld, and ought now to be paid. The committee, therefore, report a bill for the relief of John S. Russwurm, heir and legal representative of William Russwurm, deceased.

